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DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice: 9700]

RIN: 1400-AD98

Visas: Diversity Immigrants

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: This final rule is promulgated to clarify that photographs submitted as part of a diversity visa lottery entry package must have been taken no more than six months before the date the entry is made and prohibit applicants from wearing eyeglasses in photographs.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Andrea Lage, Legislation and Regulations Division, Visa Services, Bureau of Consular Affairs, Department of State, 600 19th St, N.W., Washington, D.C. 20006, (202) 485-7585.

SUPPLEMENTARY INFORMATION:

What changes are in the amended rule?

The Diversity Immigrant Visa Program is administered annually by the Department of State (“Department”). Section 203(c) of the Immigration and Nationality Act (INA), 8 U.S.C. 1153(c), provides for a class of immigrants known as “diversity immigrants” from countries with historically low rates of immigration to the United States. From millions

of applicants, certain individuals are selected through a randomized computer drawing (“selectees”) for consideration for one of the 50,000 available diversity visa numbers. These selectees are then given the opportunity to apply for a diversity immigrant visa or if present in the United States to apply for adjustment of status. To qualify for a visa, these “selectees” must meet certain requirements provided for at INA 203(c), 8 U.S.C. 1153(c), and 22 CFR 42.33.

Previously, 22 CFR 42.33(b)(2) required that photographs submitted with the diversity visa petition to be “recent.” 22 CFR 42.33(b)(2)(vii) only prohibited the wearing of sunglasses and other paraphernalia in photographs. The Department is amending the rule by adding a new subparagraph at §42.33(b)(2)(iv) to require that the photograph be taken no more than six months prior to the date of the submission, and amending the photograph requirement to prohibit eyeglasses. The Department is also making a minor change by replacing “electronic entry form” with “petition” in the opening sentence of §42.33(b)(2) to be consistent with the other parts of §42.33(b).

Why is the Department promulgating this rule?

The Department receives unauthorized entries for the diversity visa lottery each year, including entries submitted by criminal enterprises. Requiring a new photograph be submitted each year reduces the ability for a third party to submit entries without an applicant’s knowledge. The added specificity also will support the Department’s practice of automatically disqualifying any applications for which a duplicate photograph was submitted, which also reduces the possibility of fraud, including fraud committed by criminal enterprises.

REGULATORY FINDINGS

Administrative Procedure Act

This regulation is exempt from the Administrative Procedure Act (APA) as it involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is exempt from the requirements of 5 U.S.C. 553. Since this rulemaking is exempt from section 553, the provisions of 5 U.S.C. 553(d) do not apply, and this rulemaking is effective immediately.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this final rule is exempt from notice-and-comment rulemaking under 5 U.S.C. 553, it is exempt from the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (codified at 2 U.S.C. 1532) generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804. The Department is aware of no monetary effect on the U.S. economy that will result from this rulemaking.

Executive Orders 12866 and 13563

The Department has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866, and has determined that the benefits of this regulation outweigh any cost. The Department has considered this rule in light of Executive Order 13563 and affirms that this regulation is consistent with the guidance therein. The Department does not consider this rule to be a significant rulemaking action.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The rule will not have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175 – Consultation and Coordination with Indian Tribal

Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 42

Immigration, Passports and visas.

For the reasons stated in the preamble, the Department amends 22 CFR part 42 as follows:

PART 42- VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for part 42 is revised to read as follows:

Authority: 22 U.S.C. 2651a; 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295).

2. Amend §42.33 by:

- a. Revising the introductory text of paragraph (b)(2) ;
- b. Redesignating paragraphs (b)(2)(iv) through (viii) as paragraphs (b)(2)(v) through (ix), and adding a new paragraph (b)(2)(iv): and
- c. Revising redesignated paragraph (b)(2)(viii)

The revisions and addition read as follows:

§42.33 Diversity immigrants.

* * * * *

(b) * * *

(2) *Requirements for photographs.* The petition will also require inclusion of a photograph of the petitioner and of his or her spouse and all unmarried children under the age of 21 years. The photographs must meet the following specifications:

* * * * *

(iv) The image must have been taken no more than six months prior to the date of the petition submission.

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(viii) The person in the photograph must not wear eyeglasses, sunglasses, or other paraphernalia that obstruct the view of the face.

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Michele Thoren Bond,
Assistant Secretary for
Consular Affairs,
Department of State.

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